

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

January 14, 2014 at 2:00 p.m.

**NOTICE: THE ITEMS ON THIS CALENDAR HAVE BEEN REORDERED TO
PRIORITIZE TENTATIVE RULINGS. YOUR ITEM NUMBER HERE MAY NOT
MATCH YOUR EXPECTED ITEM NUMBER.**

1. [12-22801](#)-C-13 SUK KIM MOTION TO MODIFY PLAN
CAH-5 C. Anthony Hughes 11-20-13 [[87](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain of Debtor's proposed plan payment. Debtor's plan proposes a payments of \$38,009.46 through month 21 and then \$2,105.00 for months 22 through 60. Debtors

January 14, 2014 at 2:00 p.m.

Declaration proposes two different payments. One states Debtor is proposing a monthly plan payment of \$2,240.00 while another agrees with the proposed plan.

2. Debtor's Motion and Declaration contain inconsistencies regarding when amended Schedules were filed.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Section 6 of the plan (Dkt. 22) indicates that Class 2 debt to CIT Small Business Lending Corp will extend beyond the term of the plan, but shall be paid through the plan at a rate of \$1,030.00 per month, commencing at confirmation. Trustee is concerned that unless creditor agrees with treatment, the plan will not comply with applicable law. It appears Debtor is attempting to rewrite the terms of a long term debt, contrary to *In re Enewally*, 368 F.3d 1165, 1172 (9th Cir. 2004). *In re Enewally* stands for the proposition that a debtor may not use § 506(a) in combination with § 1322(b)(5) to reduce a secured claim and repay it over a period longer than the plan term. *Id.*

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified
Chapter 13 Plan filed by the Debtors having
been presented to the court, and upon review
of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

3. [13-26003](#)-C-13 SCOTT/MICHELLE GONZALES MOTION TO INCUR DEBT
RAH-5 Richard A. Hall 12-31-13 [[79](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 31, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This motion seeks permission to purchase a 2011 Toyota Camry, the lease for which is expiring. The total purchase price is \$15,498.30, including tax, at an 11.9% interest rate, payable at \$297.30 per month for 71 months. Debtors contract amount will be \$45.70 less per month than the current lease payment.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2010 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c), requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Chapter 13 Trustee

On January 7, 2014, the Chapter 13 Trustee filed a statement of non-opposition to Debtors' Motion.

Here, Debtors presented the court with a motion satisfactorily listing the material provisions of the credit agreement and attached a copy of the credit agreement with the Motion (Dkt. 82). The court is sufficiently familiar with the details of the collateral. The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Incur Debt, permitting Debtors to enter a
credit agreement with Toyota Financial
Services for the purchase of a 2011 Toyota
Camry is granted.

4. [13-34507](#)-C-13 JOHN FITZPATRICK
CA-1 Michael David Croddy
Thru #5

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
12-3-13 [[21](#)]

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Value to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 25212 Darlington, Mission Viejo, California and personal property valued at a replacement value of \$8,561.32. The Debtor seeks to value the real property at \$369,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust on the real property secures a loan with a balance of approximately \$267,000.00. The second deed of trust secures a loan with a balance of \$220,500.00. The personal property is not encumbered. The Internal Revenue Service holds a lien against the property in the amount of \$128,531.58. Debtor seeks to reduce the secured claim of the IRS to the value of the personal property, \$8,561.32.

Internal Revenue Service Opposition (filed 12/31/13, Dkt. 41)

Debtors plan only provides for Debtor in the form of a \$8,561.32 secured claim; however, Debtor's schedules show personal property of \$115,411.32 and only secured creditors, secured by respective properties. The IRS's tax lien attaches to all property and rights to property of Debtor under 26 U.S.C. § 6321. The IRS should have a secured claim of at least \$115,411.32 and to the extent the claim is not secured, the Trust Fund Recovery Penalties would be priority unsecured claims under 11 U.S.C. § 507(a) (8) (c).

Discussion

The court lacks sufficient evidence to decide the present Motion to Value. The IRS is correct in asserting that its lien attaches to all property interests of Debtor. 26 U.S.C. § 6321. Reviewing Debtors Schedule B, \$108,000.00 of the personal property is listed as an Individual Retirement Account. While the IRS does have the power to levy on retirement accounts, there are preconditions that must be met and established before the levy should take effect. The court lacks any documentation demonstrating that the IRS has a proper levy on Debtor's IRA. The court requires more information before determining the value of the IRS' secured claim.

Therefore, the court will continue the Motion to Value to **[date]** at **[time]**, to allow the parties to provide supplemental evidence supporting arguments for the value of the IRS' secured claim.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is continued to
[date] at **[time]**.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 3, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

A prior hearing on the Motion to Value was held on December 17, 2013 at 2:00 p.m. The parties agreed to continue the hearing because the IRS was in the process of obtaining an appraisal of the subject property. The docket does not contain an update on the appraised value of the subject property. Therefore, the court's tentative decision remains unchanged.

MOTION

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 25212 Darlington, Mission Viejo, California. The Debtor seeks to value the property at a fair market value of \$369,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$267,000.00. The second deed of trust secures a loan with a balance of approximately \$220,500.00. CIT Bank/U.S. Small Business

Administration's third position UCC lien against the property is in the amount of \$100,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CIT Bank/U.S. Small Business Administration secured by a UCC lien recorded against the real property commonly known as 25212 Darlington, Mission Viejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$369,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors have not paid one or more installments of filing fees due on December 2, 2013. 11 U.S.C. § 1325(a)(2).
2. Debtors' plan relies on a pending Motion to Value the secured claims of Bank of America, Toyota Financial Services, and Operating Engineers Credit Union, which are set for hearing on January 28, 2014. If the Motions are not granted, the plan lacks sufficient funds to pay the claims in full. 11 U.S.C. § 1325(a)(6).
3. Debtor has not properly completed Form B22C and Trustee objects to deductions on the form based on information provided by Debtor in schedules. Trustee believes that line #59 should be positive at least \$991.99. Debtors plan proposes payments of \$532.53 for 60 months, with a 6% dividend to unsecured creditors, totaling \$7,751.05. Based on Trustee's calculations, unsecured creditors should received \$59,519.40.

The court's decision to deny confirmation. Debtor did remedy the filing fee issue cited by Trustee; however, confirmation is premature at this point because Debtor has three Motions to Value pending and needs to resolve the issues with Form B22C highlighted by Trustee.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
2. Debtor's plan does not reflect best efforts, as required pursuant to 11 U.S.C. § 1325(b). The plan proposes to pay 100% to unsecured creditors; however, the plan payment is insufficient to fund a 100% plan. Debtor's projected disposable income is listed on Schedule J as \$2,528.50 and Debtor is propose a plan payment of only \$526.71. Furthermore, Debtor's plan provides for Premiere Finance Bank's 2006 Suzuki in Class 2 of the plan; however, Debtor lists and expense of \$138.00 on Schedule J for the same motorcycle.
3. Debtor's plan proposes a monthly plan payment of \$526.71; however, the payment is insufficient to fund the three Class 1 mortgage payments of \$320.00 to Navajo Capital, Inc.; \$320.00 to Villa Holdings; and \$500.00 to Terry Waters.
4. Debtor's plan may not comply with 11 U.S.C. § 1325(a) (1) as

Debtor's plan proposes to pay interest on arrears to Navajo Capital, Inc., Villa Holdings, and Terry Waters in class 1; however, these creditors may not be entitled to interest under 11 U.S.C. § 1322(e) unless the plan provides for interest on late payments or applicable non-bankruptcy law requires it.

5. Debtor did not provide a specific amount for the monthly dividend for Class 1 mortgage arrears. Debtor improperly listed the arrears to be paid "pro-rata."
6. Debtors plan does not pass Chapter 7 Liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$179,875.00 and Debtor is proposing a 100% dividend to unsecured creditors; however, the plan payment is insufficient to pay all creditors in full.
7. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). According to Schedule I, Debtor is self-employed; however, Debtor does not list any business expenses on Schedule J.

The court's decision to deny confirmation. Debtor's plan contains multiple deficiencies, as outlined by the Trustee, that need to be addressed before the court can consider confirmation.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to set the Motion to Value Collateral for an evidentiary hearing on [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 7566 Mandy Drive, Sacramento, California. The Debtors seeks to value the property at a fair market value of \$60,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

J.P Morgan Chase Bank, N.A.'s first deed of trust secures a loan with a balance of approximately \$147,683.50. Therefore, the respondent creditor's claim secured by a first deed of trust is under-collateralized. Debtor seeks to value the secured claim of creditor at \$60,000.00.

Creditor's Objection

Creditor opposes Debtors' Motion on the basis that the proper value of the residence is \$155,000.00. Creditor attached a Broker's Price Opinion as supporting evidence of value. (Dkt. 39, Exh. C).

Creditor requests the opportunity to obtains an independent appraisal of the property.

Debtors' Response

Debtors reply to Creditor's opposition alleging that the Broker's Price Opinion is hearsay, as it was not based on actual personal knowledge because not party has inspected the property. Debtors argue that the price

chosen by Creditor from the BPO was "cherry picked" from a range of \$33,900 to \$175,000.00.

Discussion

There exists a clear evidentiary dispute concerning the value of the subject property and the court lacks sufficient evidence to value the secured claim of J.P. Morgan Chase Bank, N.A. The court's decision is to set the matter for evidentiary hearing on **[date]** at **[time]**. At that time, Creditor may present its appraisal to the court and Debtor may supplement Debtor's Declaration with more evidence of value.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is to be set for an evidentiary hearing to determine the value of the collateral located at 7566 Mandy Drive, Sacramento, California. The evidentiary hearing shall take place on **[date]** at **[time]**.

9. [13-34316](#)-C-13 RODOLFO/CHARITO BACHILLER OBJECTION TO CONFIRMATION OF
TSB-1 Scott A. CoBen PLAN BY DAVID CUSICK
12-17-13 [[16](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it is not the Debtors' best efforts. 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of \$1,295.00 for 60 months with a 100% dividend to unsecured creditors. Based on Trustee's evaluation of Debtors Form B22C and Schedule J, Debtors have projected disposable income of \$3,271 and are only proposing a plan payment of \$1,295.00.

Debtors' Opposition

Debtors respond to the Trustee and have no objection to increasing the plan payment to \$3,272.00, so as to reflect that the plan is the best efforts of Debtors. Debtors request making the change in the plan payment amount in the order confirming the plan.

The court will permit Debtors to indicate that plan payments will increase to \$3,272.00 in the order confirming the plan and overrule the objection.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and the Objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled and the plan is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtors will clarify that plan payments are to be \$3,272.00 for the term of the plan.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 7, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Hardship Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion for Hardship Discharge. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

On January 3, 2012, Debtor filed his Chapter 13 case. Debtor's Chapter 13 plan was confirmed on August 19, 2012. Debtor now seeks a discharge under 11 U.S.C. § 1328. Debtor makes the following arguments in favor of discharge:

(1.) 11 U.S.C. § 1328(b)(1): In July 2013, Debtor's father passed away, resulting in Debtor falling behind in plan payments. Debtor lost his job in November 2013, and his last day of work was November 22, 2013. Debtor will be receiving unemployment income of \$450 per week (\$1,950.00 per month). Debtor will have negative disposable income. Debtor cannot justly be held accountable for these circumstances.

(2.) 11 U.S.C. § 1328(b)(2): Based on the value of Debtor's property on the date of filing, there are no non-exempt assets available for unsecured creditors had Debtor filed a Chapter 7 bankruptcy.

(3.) 11 U.S.C. § 1328(b)(3): Modification under § 1329 is not practicable as a result of Debtor's unemployment, which greatly reduced his disposable income. Debtor's unemployment benefits are not sufficient to cover his

monthly expenses.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes Debtor's Motion on the following grounds:

1. Debtor did not provide sufficient information to explain why a modification of the plan under § 1329 is not practicable. 11 U.S.C. § 1328(b)(3).
2. Debtor does not address whether he will be seeking full time employment, what work he is looking for, what the prospects are, or whether he will regain employment in the remaining 37 months of the 60 month plan.
3. Debtor only presents hypothetical Schedules I & J (Dkt. 65), showing expenses exceeding income by \$790.67.
4. Based upon the proposed Amended I & J, if Debtor surrendered his vehicle (414.00/mo), eliminated his payments of additional dependents not living at home (\$200.00/mo), and reduced expenses for personal care items (\$100.00/mo), recreation (\$100.00/mo), repair and replacement of household items (\$25.00/mo), and transportation (\$381.67/mo), his budget could show the ability to make a plan payment.

Discussion

The court needs to evaluate a few matters in determining whether Debtor qualifies for a hardship discharge. The first threshold question is whether Debtor is eligible for a discharge. If so, then the court can evaluate the three prong requirement set forth in 11 U.S.C. § 1328(b)(1)-(3).

(1.) Eligibility for Discharge Under 11 U.S.C. § 1328(f) & FRBP 9006(a)

Debtor's eligibility for a Chapter 13 discharge at this point in time is called into question by a previous, undisclosed Chapter 7 bankruptcy filed in 2008. On January 3, 2008, Debtor filed a *pro se* Chapter 7 bankruptcy case and received a discharge on May 5, 2013. This previous bankruptcy filing and discharge was not disclosed on Debtor's Chapter 13 petition.

Pursuant to 11 U.S.C. § 1328(f), the court cannot grant a discharge of debts provided for in a plan if the debtor has received a discharge in a Chapter 7 case filed in the four-year period preceding the date of Debtor's Chapter 13 order for relief. 11 U.S.C. § 1328(f)(1). The commencement of a voluntary case under Chapter 13 of Title 11 constitutes an order for relief. 11 U.S.C. § 301(b). Debtor obtained his order for relief in his Chapter 13 case on the date the voluntary petition was filed, January 3, 2012. Debtor's previous Chapter 7 case was filed on January 3, 2008. (Case No. 08-20136).

Federal Rule of Bankruptcy Procedure 9006(a) provides the rule for computing time. For periods stated in days or a longer unit, the day the event is triggered (here the January 3, 2008 filing) is not counted, and the last day of the period is counted, including all of the intervening Saturdays, Sundays, and legal holidays. Rule 9006(a)(1). Therefore, pursuant to FRBP 9006(a)(1), the four-year period commencing on the date of Debtor's Chapter 7 filing starts January 4, 2008 and runs through January 3, 2012.

Debtor's Chapter 13 filing was within the four-year period following the filing of their previous Chapter 7 case.

Because Debtor received a discharge in a Chapter 7 case filed within four-years preceding the filing date of its Chapter 13 case, Debtor is not eligible for discharge under 11 U.S.C. § 1328(f).

(2.) Eligibility for Discharge Under 11 U.S.C. § 1328(b)(1)-(3)

It is prudent of the court to complete the analysis of Debtor's request for a hardship discharge, notwithstanding the bar to Debtor's discharge eligibility.

The court takes no issue with Debtor's position on the first two prongs of 11 U.S.C. § 1328(b). The court is not satisfied with Debtor's analysis regarding the third prong and concurs with the Trustee in finding that Debtor has not presented a thorough enough analysis to conclude that plan modification is not feasible.

Debtor's current plan payment is \$925.00 per month and the plan provides for the following debts:

1. Class 2: Capital One Auto Finance, \$585.00 monthly dividend
2. Class 4: 401K Savings Plan, provided for outside plan
3. Class 5 Unsecured Priority Tax Claims: Approximately \$2,430 to Placer County for court fines, \$7,000 to the Franchise Tax Board, and \$25,000 to the Internal Revenue Service.
4. Class 7 Unsecured Claims: Claims totaling \$14,444, to receive no less than 8.8% dividend

The effect of an early discharge would be to clear Debtor's liability for the unsecured claims in Class 7. Debtor contends that modification of the plan is not practicable because Debtor's monthly disposable income has substantially declined. Debtor's Motion states that his projected disposable income is \$790.67, while also stating that Debtor does not project any disposable monthly income. From a review of attached Exh. B, it appears that Debtor meant to state that net monthly income totals negative \$790.67.

Reiterating the concerns of the Trustee, the court queries whether Debtor is attempting to find new employment and what his prospects are for employment during the remaining term of the plan. By reducing expenses and modifying his plan payment, Debtor could continue in his plan with the intention of increasing plan payments after new employment is secured. Debtor has not sufficiently presented the court with evidence that plan modification is not practicable.

The court's decision is to deny Debtor's Motion. While the court is sympathetic to Debtor's situation, Debtor does not qualify for a discharge under 11 U.S.C. § 1328(f). Even if Debtor did qualify for discharge, Debtor needs to reevaluate his potential for plan modification before the court will consider entering a hardship discharge.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Hardship Discharge filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Hardship Discharge is denied without prejudice.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 23, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This motion seeks permission to incur a student loan for co-Debtor Valerie Winsauer, in an amount not to exceed \$20,269.00. This amount will cover the remaining six (6) terms co-Debtor has left to graduate. Repayment of the loan will commence in approximately 15-18 months, when co-Debtor completes her final class credit, during the plan repayment period.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2010 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c), requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A).

Debtors' Motion contains no material provisions and does not even state the debt amount Debtor is seeking to incur. The Motion directs the court to Debtors' Declaration (Dkt. 78), which contains information limited to the amount of the credit extension requested and no other material provisions.

Co-Debtor attached a Master Promissory Note (Dkt. 79) she is executing with the Federal Direct Stafford/Ford Loan Program. The court is left to assume that Debtor is attempting to fund the entire \$20,269.00 through the federal loan program. The Note is general and does not appear to specify the extension of credit sought by Debtor. Debtor states that the

interest rate and payment terms for the loan will not be set until the loan is funded. However, it is possible that somewhere in the attached note a range or indicator is applied for student loan interest rates. Debtor should not expect the court to sift through the pages of small type to glean the potential terms of the loan. Rule 4001(c) is explicit in placing that onus on Debtor and requiring that information to be set forth in Debtors' Motion. Although Debtors' plan proposes to pay 100% of unsecured, secured, and unsecured priority Debtor, Debtor has not complied with the procedural requirements of Rule 4001(c) and the court lacks sufficient information to grant the motion to incur debt.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Incur Debt is denied without prejudice.

12. [13-26421](#)-C-13 SHARON BORDEN
NLE-3 Deepak S. Parwatikar

CONTINUED MOTION TO DISGORGE
ATTORNEY FEES
7-29-13 [[30](#)]

CASE DISMISSED 9/5/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Debtor, Debtor's Attorney, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Disgorge Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to set the Motion to Disgorge for an evidentiary hearing on [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Previous Hearings

On August 27, 2013, the court continued the hearing on the Motion to Disgorge Fees to September 10, 2013. As part of the continuance, counsel for Debtor was required to file a 2016(b) statement for attorney Ronald Burns by the end of the day on August 27, 2013. No such statement was filed with the court.

At the hearing held September 10, 2013, the court continued the matter for supplemental pleadings. The Trustee requested the continuance because he had sent out discovery requests to Debtor's Counsel, which had not yet been received. The hearing was continued to January 14, 2014.

Supplemental materials have been submitted by the Chapter 13 Trustee, Debtor's Counsel, and Debtor. All pleadings for this matter are included below, in order of submission to the court.

Chapter 13 Trustee Motion to Disgorge Fees

The Chapter 13 Trustee sought to disgorge attorney fees in this case against Debtor's counsel, Deepak Parwatikar, who has represented Debtor in the current case.

Debtor did not adequately disclose payment of attorney fees in Debtor's Plan, Rights and Responsibilities, and the Attorney Disclosure of Compensation. These documents indicate that total fees of \$3,000.00 have been charged in this case, and \$1,000.00 was paid by Debtor to Pinnacle Law Center with \$2,000.00 to be paid through the plan. According to Trustee, at

January 14, 2014 at 2:00 p.m.

the First Meeting of Creditors, Debtor testified that she already paid her attorney \$4,000.00 in connection with loan modification assistance.

At the first meeting of creditors, Debtor's counsel of record did not appear. Instead, attorney Ronald Burns appeared to represent Debtor.

Debtor's counsel was obligated to attend the meeting of creditors, as provided in Rights and Responsibilities and numerous other deficiencies exist in the plan and in the case, from the period of inception. The deficiencies include not filing a spousal waiver, tax returns or pay stubs, and a plan that calls for payments of \$501.00 per month while also calling for Trustee to make ongoing mortgage payments of \$1,479.00 per month.

Trustee asked the court to grant an Order disgorging attorney fees in the amount of \$1,000.00 in this case which was pre-paid by Debtor.

Debtor's Response (filed 08/05/13, Dkt. 41)

Debtor and Debtor's counsel filed a response to this motion. First, Debtor states the deficiencies cited by Trustee have been cured. On July 20, 2013, Debtor submitted an amended plan to cure the feasibility issues raised by Trustee. Trustee has not filed an objection to the amended plan. Debtor submitted the spousal waiver on July 30, 2013. Debtor states she submitted to Trustee the 2012 tax return extension form, pay advances, and proof of delinquent plan payments in the amount of \$1,002.00.

Debtor states that Trustee's belief that Debtor's attorney did not disclose all the fees received in connection with Debtor's bankruptcy case is not accurate. According to Debtor, and attached declarations of Debtor and Debtor's attorney, at the First Meeting of Creditors, Debtor confused Real Estate Law Center, P.C., with Pinnacle Law Center, P.C. Debtor was referred to Pinnacle Law Center for bankruptcy filing services by Real Estate Law Center, which Debtor retained for a different matter outside the scope of bankruptcy. Debtor's attorney is not a member of Real Estate Law Center and has received \$1,000.00 in attorney's fees prior to filing and expects \$2,000.00 through Debtor's plan.

Finally, Debtor points out that the Rights and Responsibilities do not require the counsel of record to attend the Meeting of Creditors and notes that Debtor was represented by a California licensed attorney.

Pursuant to 11 U.S.C. § 329, the court has authority to order an attorney to disgorge excessive fees. *In re Zepecki*, 258 B.R. 719 (B.A.P. 8th Cir. 2001). Section 329(b) provides that if compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive to the entity that made such payment. Compensation may be reduced if the court finds that the work done was of poor quality. *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007).

2016(b) Statement for Attorney Robert Burns

In lieu of a 2016(b) statement for Robert Burns, Debtor's counsel filed a "Disclosure of Compensation of Attorney for Debtor" (Dkt. 60) signed by Deepak S. Parwatikar and a "Declaration of Deepak S. Parwatikar in Support of Disclosure of Compensation of Attorney for Debtor" (Dkt. 61). In the declaration, counsel states he paid Attorneys on Demand \$150.00 to have

Ronald Burns appear at the 341(a) Meeting of Creditors. Counsel attached receipt of payment to Attorneys on Demand as exhibit A to his declaration.

Trustee's Supplemental Declaration in Support of Motion to Disgorge (filed 09/05/13)

The Chapter 13 Trustee filed a supplemental declaration in support of his Motion to Disgorge attorneys fees and asserts the following:

(1.) Debtor's counsel did not file a 2016(B) statement for Ronald Burns with the court. This inaction, taken into consideration with the content of the documents counsel for Debtor did file with the court, leaves Trustee concerned that fees in this case were shared with non-attorneys. There is no evidence to show that Attorneys on Demand is owned and operated by an attorney.

(2.) Mr. Parwatikar filed a response to Trustee's Motion to Disgorge, stating that Debtor was referred to Pinnacle Law Center, P.C., to handle her bankruptcy filing by another firm, Real Estate Law Center, P.C. and at the 341(a) Meeting, when Debtor stated she had already paid Pinnacle \$4,000.00, she was mistaken, as that payment was to Real Estate Law Center and not Pinnacle. Mr. Parwatikar also filed a declaration in response to Trustee's Motion to Disgorge. In the declaration, he states that at the 341(a) Meeting of Creditors that he is not a member or associate of Real Estate Law Center, P.C. (Dkt. 42, Para. 6, Pg. 2). Trustee presented the following information for the court to consider in light of Mr. Parwatikar's claim that Real Estate Law Center and Pinnacle Law Center are separate entities and he is not associated with Real Estate Law Center:

(a.) Ripoff Report, listing Real Estate Law Center, P.C., with Mr. Parwatikar's name mentioned in connection with a scam complaint. (Exh. A). The same documents connects Mr. Parwatikar with Balanced Legal Group and Legal Justice Law Center. Mr. Parwatikar's profile on the California Bar Website lists his address as "The Balanced Legal Group." (Exh. B).

(b.) FindLaw listing for a profile updated on October 5, 2012 for Deepak Parwatikar, Real Estate Law Center, P.C., 695 South Vermont Avenue, Los Angeles, California. The address is almost identical to the address on file with the court for Pinnacle Law Center, with the difference being the Suite numbers. (Exh. C).

(c.) Ripoff Report, Complaint of Legal Justice Law Center, connecting Mr. Parwatikar to a scam. (Exh. E).

(d.) Real Estate Law Center Contract Review article mentioning a connection between Real Estate Law Center and Pinnacle Law Center and possible sharing of fees for referrals. (Exh. F).

(3.) At the hearing on Trustee's Motion to Disgorge, attorney Tala Rezai appeared and stated multiple times she was an associate for Pinnacle Law Center. A California Bar website search for Tala Rezai revealed an address of 5505 Newcastle Lane, Calabasas, California (Exh. G).

(4.) On the website of Real Estate Law Center, P.C., Tala Rezai is listed third on the Law Center's list of attorneys. (Exh. H). The credentials match those of the Tala Rezai reported to the California Bar. An article included as Exh. D mentions Tala Rezai in connection with Real Estate Law Center.

Trustee is concerned with the conduct of counsel and for Debtor in this case. The veracity of Mr. Parwatikar's declaration is undermined by the documents presented, as are the claims of Ms. Rezai. The Trustee questions what other information may be false, misleading, or less than valid in Debtor's petition and schedules.

Debtor's Response (filed 09/09/13)

Debtor asserts that the exhibits presented in the Trustee's Supplemental Declaration are inadmissible hearsay. Debtor argues that even if the exhibits were accepted as evidence, they provide not proof that in the instant case, Deepak Parwatikar did not disclose all the fees received.

Trustee's Supplemental Declaration in Support of Motion to Disgorge (filed 01/06/14)

On behalf of the Chapter 13 Trustee, Talvinder Bambhra provides this declaration. Mr. Bambhra declares that the Trustee's office has received discovery responses and some of the documents requested from Debtor's counsel (attached as Exh. A through E to the Declaration).

The Declaration brings the following information from the responses to the court's attention:

INTERROGATORIES

(1.) **Interrogatory No. 9** asks: "Does Pinnacle Law Center, P.C. employ any full-time attorneys as associates of the firm, other than Deepak Parwatikar?" Response: "No." (Exh. A, p. 4).

Trustee is concerned by this response because at the first hearing on this matter, counsel by the name of Tala Rezai appeared representing Debtor and repeatedly stating she was an associate of Pinnacle Law Center, P.C.

(2.) **Interrogatory No. 6** asks: "Does Pinnacle Law Center, P.C. have a referral fee agreement with Real Estate Law Center, P.C.?" Response: "No." (Exh. A, p. 4)

Trustee file a Declaration of Brian Lee Phillips (Dkt. 90) on December 19, 2011. In the declaration, Mr. Phillips, an attorney formerly employed by Real Estate Law Center PC, authenticates a document filed as Exhibit 1 with this declaration. The document is an Attorney-Client Fee Agreement used by Real Estate Law Center, OC (Dkt. 92).

On Page 2, paragraph 10, titled, "Association with Third Party Attorneys & Servicers," the document states, in part:

. . . Client understand that there will be a division of fees between RELC and Pinnacle Law Center, PC (PLC) whereby RELC receives 20% and

PLC receives 80%, and client agrees to the said division. PLC is a separate law firm not related to RELC. Client is not retaining PLC nor is PLC a litigation firm. PLC is only involved with referring clients to RELC.

Trustee argues that this document demonstrates that Pinnacle Law Center, PC not only received the \$1,000 up front fee for the bankruptcy, but arguable, 80% of the \$4,000 or \$3,200 paid to Real Estate Law Center, PC for the "different matter outside the scope of bankruptcy."

REQUESTS FOR PRODUCTION OF DOCUMENT

(1.) **Request No. 1.** Trustee requested Debtor to provide the "Attorney-Client Retainer Agreement" between Debtor and Pinnacle Law Center, PC. It is attached as Exh. B.

Trustee directs the court to page 2 of the Agreement, paragraphs E and F. Paragraph E states that up-front fees do not include certain matters, and for those matters not included in the up-front fees, there will be a \$250.00/hour charge. Paragraph F states: "If one of the matters lists in paragraph E above arises . . . you will have the option of retaining this office to represent your interest; otherwise this office will not be representing you." Many of the enumerated matters in paragraph E appear to be contrary to the Rights and Responsibilities in file with the court.

(2.) **Request No. 6.** Trustee requested a copy of the Chapter 13 Retainer Agreement and Chapter 7 Retainer Agreement. Copies are attached as Exhs. C & D, respectively.

(3.) **Request No. 5.** Trustee requested a copy of the Debtor's bank statement for the bank account in which the up-front fees were deposited. A copy is attached as Exh. E.

Trustee draws the court's attention to Account 8604, titled "Business Economy Checking." The date of payment of the fees is May 9, 2013, in the amount of \$1,500. The Statement of Financial Affairs (Dkt. 11) states that Debtor paid \$1,000 in attorney fees and \$281.00 filing fee. The retainer agreement and bank account show \$1,500 was paid. There is no accounting of the additional \$219.00 paid by Debtor to her attorney.

Counsel for Debtor Response (filed 01/09/14)

Debtor's Response is a list of evidentiary objections to the Declaration of Mr. Bamhbra and attached Exhibits (Dkts. 71 and 72).

Generally, the response asserts that Trustee's attorney's claims lack foundation, relevance, are hearsay, prejudicial and confusing. Further, they are unsupported by personal knowledge, equate to character evidence and assume facts not supported by evidence.

Debtor's Supplemental Response (filed 01/09/14)

Debtor submits the following in response to Mr. Bamhbra's Supplemental Declaration detailing responses to Interrogatories and Requests for

Production:

1. Tala Rezai is not a "Full Time" employee of Pinnacle Law Center, P.C. and Interrogatory No. 9 asked whether Pinnacle employed any "fulltime attorneys."
2. The Attorney-Client agreement submitted by Mr. Phillips was submitted by a disgruntled employee of Real Estate Law Center. This is supported by Chad Pratt, lead attorney and sole shareholder of Real Estate Law Center (Declr. Dkt. 98). Mr. Pratt asserts that the Agreement provided by Mr. Phillips is not the retainer agreement signed by the client in the instant case. It lacks foundation and personal knowledge.
3. The Attorney-Client Fee agreement does not prove that Debtor paid Pinnacle Law Center, PC additional fees for bankruptcy, not disclosed in the schedules and statements. Nor does it prove that Debtor paid any fees to Real Estate Law Center for a different matter outside of bankruptcy. The document is not the retainer agreement at issue and is not relevant.
4. Mr. Phillip's declaration is not relevant to the Motion to Disgorge. He has no knowledge of bankruptcy law and he lacks personal knowledge.
5. No proof has been submitted by Mr. Bambhra or Mr. Phillips showing that Pinnacle or Mr. Parvatikar received a percentage of any fees received by Real Estate Law Center, PC from Debtor.
6. The Attorney-Client Agreement does not conflict with Rights and Responsibilities. Mr. Bambhra unfairly takes pieces of language from the Retainer Agreement to demonstrate inconsistencies.
7. Debtor paid Pinnacle Law Center \$1,500 up-front for bankruptcy. Of that, \$1,000 was paid for attorney fees and \$500 for fees and costs. The filing fee was \$281.00.

Discussion

The court's decision is to set this matter for an evidentiary to determine whether Debtor's Counsel should have fees disgorge and, if so, in what amount. The evidence before the court is conflicting and resolution in a separate evidentiary proceeding will permit each party to present evidence in a cohesive manner. This will permit a more orderly resolution of this matter.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions
of Law are stated in the Civil Minutes
for the hearing.

The Motion to Disgorge
Attorney's Fees filed by the Trustee
having been presented to the court,
and upon review of the pleadings,
evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Disgorge is set for an evidentiary
hearing on **[date]** at **[time]**.

January 14, 2014 at 2:00 p.m.

Page 29 of 127

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2013. Forty-two days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan on the following grounds:

1. The plan completes in 88 months, exceeding the 60 month maximum under 11 U.S.C. § 1322(d). Trustee calculated that the total debts to be paid through the plan equal \$249,475.69; however, Debtor is only proposing to pay a total of \$258,900.00 into the plan.
2. The plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$3,065.00 for 60 months and a lump sum of \$45,000.00, with a 0% dividend to unsecured creditors. Form B22C reflects line #59 is \$903.43 for 60 months, which totals \$54,385.80 to unsecured creditors. Also, Amended Schedule J reflects a higher projected disposable income than what is proposed in Debtor's plan.
3. Debtor may not be able to make the plan payments required by 11 U.S.C. § 1325(a)(6). Debtor's prior plan, filed September 20, 2013, reflected a lump sum payment of \$28,000.00; however, Debtor's amended plan, filed November 22, 2013, changed the lump sum payment to \$45,000.00 without explanation as to how Debtor can afford this increase.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2013. Forty-two days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan for the following reasons:

1. Debtor cannot afford the plan payment. Debtors' original documents reflect that Debtors own a corporation with liabilities of \$38,268 and assets of \$27,208, that both Debtors are self-employed contractors earning \$1,280 per month each plus social security of \$805.00, and that the gross business income of Debtors in 2011 was \$29,565, the gross business income of Debtors in 2012 as \$2,100.00, and year-to-date in 2013 the gross business income of Debtors was \$600.00. Debtor now projects \$600.00 anticipated gross monthly income from a new job (Dkt. 74, p. 8). Debtors have not adequately explained or addressed how they can afford the plan payments based on Debtors' historic business performance as disclosed by Debtors in the Statement of Financial Affairs.
2. Debtors' plan may not pass the Chapter 7 liquidation analysis. In the even that Debtors earn \$2,560 monthly from their corporation, Debtors' valuation of their corporate at \$0.00 may be misleading. Debtors provided Trustee with the 2009, 2010, and 2011 corporate tax returns, reflecting gross corporate receipts of \$252,672, \$95,502, and \$308,055, respectively. Debtor has not itemized the assets or liabilities of the corporation and Trustee believes Debtor has not prove then value of the corporate to be \$0.00.

3. Trustee is uncertain whether Debtors are putting forth their best efforts, as required by 11 U.S.C. § 1325(b), because Debtors' income has not been established by convincing evidence, such as copies of Personal and Corporate pay advices and bank statements for six months.
4. Debtors' plan may not be proposed in good faith. 11 U.S.C. § 1325(a)(3). Debtors propose for the third time a plan paying \$150.00 for 36 months with no less than 0.5% to unsecured creditors. Debtors negotiated a stipulation with Creditor Wells Fargo that contemplated an additional payment of \$159.00 per month, paid outside the plan. When incorporating this into their confirmation efforts, Debtors simply provided that they were able to increase their monthly income by \$160.00 by tightening their budget. However, when Trustee asked for additional information to demonstrate Debtors' ability to afford the additional \$160.00, Debtors stated they could not afford to pay their accountant for additional profit/loss statements.

Debtors are not disclosing relevant information, including when Debbie Mazur obtained new employment, or how long she has been working. Debtors assert that it was her new job that provided for the additional \$160.00 in income; however, documents submitted to the Trustee indicate that Mazur had the job prior to when it was represented that she obtained the job.

Debtors increased utilities by \$60.00 without explanation.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

15. [13-33934](#)-C-13 KATHRYN GOGGIANO
NLE-1 Robert P. Huckaby
Thru #26

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[29](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' plan relies on Motions to Value the secured claims of Wells Fargo Bank, N.A. and J.P. Morgan Chase Bank, N.A., which are set for hearing on January 14, 2014. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a) (6).
2. Debtor's plan lists real property at 913 Nicole Street, Dayton, Nevada in Class 3, to be surrendered. Class 2C lists the second mortgage on this property and indicates the claim is to be reduced to \$0.00. Debtor filed a Motion to Value the secured claim of Wells Fargo Bank, N.A., set for hearing on January 14, 2014. Debtor testified at the 341 Meeting on December 5, 2013 that she is three months delinquent in mortgage payments, is receiving rent of \$825.00 per month, and is attempting to obtain a loan modification. The plan is ambiguous as to the intended treatment of the property.
3. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b).

Debtor's household income appears to be understated. Schedule I lists gross income for her non-filing spouse as \$4,523.00

per month. A review of the pay advices provided to Trustee indicated he is paid weekly and his base pay rate is \$28.95 per hour. Each pay stub shows 40 hours, which amounts to an average of \$5,018 per month. The most recent pay stub is October 31, 2013, and reflects a year-to-date earnings total of \$52,156, which averages to \$5,215 per month. The statement of current monthly income also reflects income for Debtor's spouse of \$4,536 per month.

Schedule J lists on line 17 "pets, personal storage" for \$825.00 per month. This expense appears inflated.

Trustee objects to the following Form B22C deductions:

(1.) Line 4a lists business income of \$1,721; line 4b deducts the entire income as business expenses, contrary to the holding in *In re Wiegand*, 2008 Bankr. LEXIS 1256 (9th cir. B.A.P. 2008).

(2.) Line 37 telecommunication services lists \$403.00. This deduction matches the telephone expense on Debtor's Schedule J, line 2c. According to the instructions on the form, this expense is to be used for services "other than your basic home telephone and cell phone service."

(3.) Line 44 additional food and clothing of \$36.00. No evidence is provided to substantiate this deduction.

(4.) Line 47b lists rental expense of \$1,001, where the treatment in the plan is not clear.

(5.) Line 47c lists an expense for "phoenix rental" of \$593.00. This property is not disclosed on Debtor's Schedules. Debtor testified at the 341 Meeting that this property is owned by her spouse and was purchased on 2011.

By the Trustee's calculations, Line 59 should reflect positive \$303.00. Based on the applicable commitment period of 60 months, unsecured creditors should receive \$18,180 over the life of the plan. Debtor proposes to pay 0% to unsecured creditors.

4. Debtor has not disclosed all secured debts. Schedule J lists on line 12 a boat payment of \$130.00. Schedule D does not list any secured debt for a boat. Line 13a of Schedule J lists and auto payment of \$844.00. Schedule D does not list any secured debt for a vehicle. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtor wishes to conceal the proposed treatment of creditor.

The court's decision to deny confirmation. Although the court is prepared to grant one of the pending Motions to Value, the other Motion is set to be continued and Debtor has not resolved the multiple serious concerns raised by the Chapter 13 Trustee.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. [13-33934](#)-C-13 KATHRYN GOGGIANO
RPH-1 Robert P. Huckaby

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK N.A.
11-20-13 [[16](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 20, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the Motion to Value Collateral to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3490 Rancho Circle, South Lake Tahoe, California. The Debtor seeks to value the property at a fair market value of \$280,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$285,000.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$110,092.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Creditor objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$288,000.00, based on a Broker's Price Opinion. Creditor requests the opportunity to obtain its own independent appraisal of the property.

As there is a factual dispute concerning the value of the subject property, the court will grant Creditor a continuance to obtain an independent appraisal of the property's value.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is continued to **[date]** at **[time]**.

17. [13-34036](#)-C-13 DAVID/ELENA BERNARDINO OBJECTION TO CONFIRMATION OF
NLE-1 Chelsea A. Ryan PLAN BY DAVID P. CUSICK
12-11-13 [[14](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors' plan relies on a Motion to Value the secured claim of PNC Bank National Association and The Regional Counsel of Rural Counties; however, Debtors have yet to file Motions ot Value to date. If these Motions are not heard and granted, Debtors cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. [13-34037](#)-C-13 MESHA OWENS OBJECTION TO CONFIRMATION OF
TSB-1 Peter G. Macaluso PLAN BY DAVID P. CUSICK
12-11-13 [[29](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor is \$390.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$390.00 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor's plan relies on the Motion to Value the secured claim of Aaron's Inc., which is set for hearing on January 14, 2014. If the Motion to Value is not granted, Debtor cannot afford plan payments. 11 U.S.C. § 1325(a)(6).
3. Debtor's plan does not pass the Chapter 7 Liquidation Analysis. 11 U.S.C. § 1325(a)(4). Debtor did not value her interest in the property located at 3831 Almond Grove Court, Antelope, California. Debtor's Schedule A lists the property at a value of \$1.00 and a secured claim of \$0.00., with a description of "quick claim deed received for probate purposes." (Dkt. 1, p. 16). Debtor appears to be joint owner

of the property and does not list a reasonable value.

Debtor testified that the property was purchased in September 2012 by her Grandfather and she has lived in the home since then, paying the mortgage. Debtor also testified that her father paid the down payment of \$80,000.00. Debtor's plan proposes to pay 0% to unsecured creditors.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. Debtor will be current in plan payments on/before the date of this hearing.
2. The Motion to Value the secured claim of Aaron's Inc. is set for hearing on January 14, 2014 and is expected to be granted.
3. Debtor has a probate interest in the property located at 3831 Almond Grove Court, Antelope, California. Debtor was added as a joint tenant for probate purposes, but does not have a positive financial interest at this time, given the mortgage owed on the property.

The property is valued at \$270,000, and is subject to a \$160,000 first lien and an exemption of \$150,000. Debtor will file an Amended Schedule A to reflect these values.

The court's decision to sustain the objection and deny confirmation. While Debtor's Motion to Value the secured claim of Aaron's Inc. is set to be granted at the January 12, 2014 hearing, the court is not aware that Debtor's delinquency has been resolved and Debtor has not submitted an Amended Schedule A, accurately reflecting her interest in 3831 Almond Grove Court, Antelope, California.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors lists her income of \$350.00 received from her boyfriend on Schedule I; however, Debtor has not provided a Declaration from her boyfriend stating his willingness to contribute the funds to Debtor.
2. The plan is not Debtor's best efforts, as required under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$283.95 for 60 months, with a 0% dividend to unsecured creditors, which totals \$17,037.00. Form B22C, line 59 reflects a negative \$104.89. The Trustee has revised the following lines on Form B22C, which changes line 59 to \$1,288 for 60 months, totaling \$77,286:
 - a. Line 25B: housing and utilities; mortgage/rent expense. Debtors lists \$1,300; however, Debtor lists \$1,200 rent expense on Schedule J, a difference of \$100.00.
 - b. Line 30: Taxes. Debtor lists \$1,750; however, Debtor lists \$1,544 on Schedule I for taxes, a difference of \$206.00.
 - c. Line 37: Telecommunication Services. Debtor lists \$175.00; however, Debtor lists \$30.00 internet expense on Schedule J, a difference of \$145.00.
 - d. Line 55: Qualified retirement deductions. Debtor deducts \$670.00. On Schedule I, Debtor deducts \$670.00 for retirement. The deduction for ongoing retirement should not be deducted on Form B22C, pursuant to *In re Parks*, 2012 Bankr. LEXIS 3762 (9th Cir. B.A.P. 2012).

Debtor stated at the 341 Meeting that she received a raise in November 2013, which is not reflected on Schedule I. Debtor admitted that her income is now \$7,520 gross per month; however, Schedule I reflect \$6,630.

Debtor has not listed all of her boyfriend's income on Schedule I. Debtor lists a contribution from her boyfriend of \$350.00 per month; however, Debtor has included expenses for her boyfriend on Schedule J and she has also included deductions for a household of three, which includes her boyfriend, on Form B22C.

Based on Trustee's calculations, using a household of 2 adds \$272.00 back into Line 59.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. Line 25B: this lists housing an utility expenses from the National Standards formulated by the Internal Revenue Service. Debtor's actual rent is less; however, the National Standard is the appropriate extepnse and includes more than just rent.
2. Line 30: the taxes paid by Debtor per month on Form B22C are averaged over the past six (6) months and include extra taxes for overtime employment. The amount reflected on Schedule I is drawn from Debtor's most recent pay stub as of the date of filing, November 1, 2013.
3. Line 37: the Telecommunication Services expense includes the internet expense of \$45.00 per month and mobile phone expenses of \$130.00 per month.

Debtor intends on filing an Amended Plan and Form B22C to clarify these expenses and to account for the voluntary payment for retirement.

The court's decision to sustain the objection and deny confirmation. Debtor intends on filing an Amended Plan and Form B22C to remedy the Trustee's well documented concerns.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the

January 14, 2014 at 2:00 p.m.

Page 42 of 127

proposed Chapter 13 Plan is not confirmed.

20. [13-24939](#)-C-13 TRENTON/BARBARA BAHR MOTION TO CONFIRM PLAN
RCD-1 Robert C. Duncan 11-21-13 [[63](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties requesting special notice November 21, 2011. Forty-two days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan based on the following:

Debtors' plan does not pass Chapter 7 Liquidation analysis as required under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$55,247 and Debtors are proposing a 5% dividend to unsecured creditors, totaling \$7,580. The following assets are non-exempt:

1. Rental Property located at 4880 Douglas Blvd., Granite Bay, California. At least \$55,247 is non-exempt from the rental property, based on Schedule A. Debtor does not describe the property on Schedule A and Schedule J reflects that property tax per month is \$133.00.

Schedule A reflects a value at the time of filing of \$265,000. Trustee disputes Debtors' valuation as Debtors have not provided a description of the property.

2. Corporate Stock: Debtors lists 100% of shares in Trenton Bar, Inc. with a \$0.00 value of line 13 of Schedule B. Debtor does not support their valuation of the stock and Trustee believes Debtors are referring to "Trenton Bahr, Inc.," which appears on Schedule I (Dkt. 1, p. 27) as Debtors' employer, paying them \$4,983.34. Debtor has furnished a March 2013 profit/loss statement reflecting income of \$28,384 in one month. Where the corporation is producing significant income of Debtors, Debtors should explain why they believe the value is \$0.00.

3. This plan does not reflect Debtors' best efforts, as required by 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$298.00 per month for 60 months with a 5% dividend to unsecured creditors, which totals \$7,580.50. According to Debtors' calculations on Form B22C, line 59 totals \$135.16 for 60 months, totaling \$8,109.60. Based on Trustee's calculations, line 59 totals \$1,127.16 for 60 months, which totals \$67,629.60.
4. The plan provides that the ongoing mortgage was current at the time of filing; however, the creditor has filed a claim showing a pre-petition delinquency (Claim 6). Absent proof that the ongoing mortgage was current, the plan should be denied confirmation unless the delinquency is addressed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2013. Forty-two days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee responds to Debtor's Motion to Confirm, informing the court that Debtor recently cured a plan payment delinquency. Trustee no longer has an objection to confirmation. Trustee notes that Debtor's motion is mistitled as "Motion to Modify" when it is a Motion to Confirm a plan for the first time. Trustee requests this be clarified in the Order Confirming the Plan.

Debtor's Response

Debtor agrees that the Motion should be entitled "Motion to Confirm Debtor's First Amended Plan" and the language referring to a modification "after confirmation" be stricken. Debtor agrees to clarify in the Order Confirming the Plan.

The court will permit Debtor to make the requisite clarifications regarding the title of the Motion in the Order Confirming the Plan. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 11, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtor will provide clarification as to the appropriate title for the Motion to Confirm.

22. [13-34546](#)-C-13 DANIEL/KATHLEEN REID MOTION TO VALUE COLLATERAL OF
SLH-1 Seth L. Hanson BANK OF AMERICA, N.A.
11-22-13 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 22, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order valuing the collateral securing the claim of Bank of America, N.A. ("Creditor"); however, Debtors did not service the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor Bank of America, N.A. is a federal insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institutions, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise and after service upon the institution by certified mail or notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Bank of America, N.A. at the proper location and to the attention of an officer; however, the notice was not sent via certified mail, as required by Rule 7004(h). The Proof of Service, filed with Debtors Motion (Dkt. 17), erroneously states that SunTrust Bank was served via certified mail and the "attached service list" was served notice via first class U.S. mail. Included in the attached list is Creditor Bank of America, N.A. Service does not comply with Rule 7004(h).

Therefore, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors' plan relies on a Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

A review of the court's docket reveals that the Motion to Value the collateral securing the claim of J.P. Morgan Chase Bank, N.A. is set for an evidentiary hearing on March 25, 2014. Therefore, Trustee's Objection is sustained as the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation the Plan is sustained and the
proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan does not indicate in Section 1.03 a plan term of either 36 or 60 months. Debtor's counsel has not signed nor dated the plan.
2. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Schedule I lists on line 11 income of \$33.20 for SSI for a child of a disabled parent on SSI. Debtor testified at the 341 Meeting that she is no longer receiving this income.
3. Debtor is below the median income according to Form B22C. Debtor's Schedule J lists on line 1 a mortgage payment of \$1,008. The mortgage is provided for in Class 1 of the plan. Adjusting for this error causes the net income on line 20c to be \$2,445.10, which Debtor proposes to pay \$1,434 per month into the plan. A review of the Schedules indicates it is not realistic for the care and maintenance of a household of two persons. Utilities are listed at a total of \$150.50 and food is listed at \$100.00.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not appear to be examined at the First Meeting of Creditors held on December 5, 2013. Trustee lacks sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor has not filed all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. §§ 1308 & 1325(a)(9).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2013. Forty-two days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan based on the following:

1. Debtor is \$600.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$300.00 was due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. The plan is not Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor's Schedule I lists on line 4d a payroll deduction for "Tsa Consulting" of \$1,000 per month. Debtor testified at the 341 Meeting that this is a voluntary retirement contribution. Schedule I also lists on line 4c a retirement deduction of \$572.90. Debtor indicated this deduction is mandatory CalPers retirement. Line 1 of the Schedule indicates that Debtor's gross income is \$8,184.25 monthly. A total of \$1,572.90 is being contributed to retirement, or over 19% of gross.

Debtor's Response

Debtor responds by stating that she is willing to increase the plan payment to \$700.00 per month, commencing February 2014.

The court is not aware the Debtor brought the plan payments current and has not received a response from Trustee regarding the increased plan payment and whether it resolves Trustee's outlined concerns. As it stands, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

27. [13-36064](#)-C-13 RANDOLPH/TAMARA RILEY MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 12-28-13 [8]

Local Rule 9014-1(f)(2) Motion. No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3)(B) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 12-22066) was filed on February 1, 2012 and dismissed on October 24, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of

the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed not in good faith if a Debtor did not file or amend the petition or other documents as required by the Code or the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtors state that the previous case was dismissed because Debtors did not amend their plan to address pre-petition mortgage arrears. Therefore, a presumption of the current case not being filed in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(ii)(aa). Debtors explain that when they filed their 2012 case, the owed in excess of \$50,000 in pre-petition mortgage arrears. Debtors wanted to pay down the arrears prior to filing and decided to draw down funds from Ms. Riley's 401(k). Access to \$35,457 from the 401(k) was granted and the funds were deposited into Ms. Riley's bank account on January 19, 2012, two days after Debtors signed their 2012 Chapter 13 documents. Ms. Riley did not send the funds to lender Bank of America, N.A. until February 3, 2012, two days after the 2012 case was filed.

The delay in sending the check to Bank of America, N.A. was a result of Ms. Riley working two stressful jobs and dealing with a disability that limited her ability to drive. Debtors did not understand the significance of the timing of the payment to the Bank and were attempting to make their Chapter 13 plan affordable by paying down mortgage arrears with retirement funds.

Although amounts were withheld from the retirement funds accessed by Ms. Riley from her retirement account, Debtors still owed taxes in 2012 of \$11,478 and \$2,040. These were post-petition taxes that could not be provided for in the 2012 case. Additionally because Debtors made their payment to Bank of America after the case was filed, Bank of America filed a claim for pre-petition arrears in the amount of \$55,262. Debtors did not believe they could successfully modify their plan to address these concerns and dismissed their case to start fresh.

Currently, Ms. Riley earns slightly more than she did in 2012 and Debtors do not expect to owe and 32013 income taxes.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the

automatic stay. The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes, unless terminated by further order of this court.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 20, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is delinquent \$549.20 in plan payments to the Trustee to date and the next scheduled payment of \$549.20.00 was due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
3. Section 2.06 of Debtors plan indicates that \$2,000.00 of attorney fees are due and to be paid through plan. Section 2.07 indicates "\$0.00" per month to be paid toward attorney fees.
4. The plan will not complete within 60 months, as required by 11 U.S.C. § 1322(d). Debtor's plan payment of \$549.20 per month is insufficient to cover the Class 1 dividends plus Trustee fees totaling \$875.00 per month. The dividend of \$141.15 to South Park Townhouse Association for HOA arrears will not pay the debt within 60 months. The monthly dividend should be increased to \$305.00.

5. Schedule A indicates the secured debt against the real property at 5875 Bamford Drive, Sacramento, California at \$19,323. Schedule D lists two debts against the property, one for \$47,00 to J.P. Morgan Chase Bank, N.A. and one to South Park Townhouse Association for \$19,323.
6. Debtor's Schedule B lists only bank accounts and vehicles. No other personal property is listed, such as cash, household goods, retirement accounts, insurance policies, or interests in any business. Personal property is not adequately disclosed.
7. Debtor did not adequately disclose his business. Debtor's Schedule I lists on line 7 regular business income of \$1,300.00 per month. The Statement of Financial Affairs item #18 does not disclose any business. Item #s 1 and 2 list "income" and "independent work," but do not indicate the source.
8. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Schedule J indicates on lines 1a and 1b that real estate taxes and insurance are included in the mortgage payment. Line 11a lists another expense for homeowners insurance of \$190.00. This expense is deducted twice.
9. Debtor's petition lists a "7 case" but does not list the case number. A search of associated cases reveals a prior case, case number 09-34925.
10. Debtor has not provided Trustee with required business documents, such as business questionnaire, copy of business license, copies of insurance declarations, Profit and Loss statements, and six months of business bank statements.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 23, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's tentative decision is to deny the Motion to Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This motion seeks permission to incur debt of \$24,911.00 to finance the purchase of a 2011 Acura MDX. Debtor is seeks to enter a financing agreement with Travis Credit Union.

Debtors' Motion explains that Debtor's lease for the vehicle expired in November 2013 and now Debtor seeks to purchase the vehicle. Under the financing agreement, the monthly payment would be \$587.70 per month for 48 months. Upon approval of this Motion, Debtor intends to submit a motion to modify the current Plan so that monthly payments for months 20 through 60 will continue to be \$875.00 per month, instead of increase to \$1,690 per month. The purchase will reduce Debtor's monthly auto payment from \$685.70 per moth to the proposed \$583.70 per month.

Debtor attached a document from Travis Credit Union. The document is a letter from Christine Turner, Member Service Representative, dated October 09, 2013. The letter states that Debtor has applies for a loan with the intention of buying his current lease. It states that the loan could come with a rate as low as 5.63% or as high as 6.38%.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2010 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c), requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at

4001(c) (1) (A) .

Debtor provided some of the material terms in the Motion and directed the court to Exhibit A to find the potential range for the interest rate. Rule 4001(c) requires a copy of the financing agreement be presented to the court. In lieu of the financing agreement, Debtor provided a letter from Travis Credit Union detailing the potential terms. While the documents provided are not ideal, the court is willing to work with Debtor through the lending process.

Therefore, the court will approve the Motion to Incur Debt in the amount of \$24,911 at an interest rate not to exceed 6.38% with payments lasting 48 months at \$583.70 per month. If the final version of Debtor's financing agreement varies from these terms, Debtor must return to the court and seek approval of the difference terms.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is granted and Debtor may incur debt of \$24,911 at an interest not to exceed 6.38% with payments lasting 48 months at \$578.70 per month.

IT IS FURTHER ORDERED that if the terms of Debtor's final financing agreement vary from the terms present in this order, the Debtor will return to the court and seek approval of the different terms.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the Motion to Confirm the Plan to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This matter was continued from a hearing on November 19, 2013, per Debtor's request to be given additional time to provide supplemental documents the addressing Trustee's issues with the Amended Plan.

The Chapter 13 Trustee opposed confirmation of Debtors' plan on the grounds below:

(1.) Trustee asserts that Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income, as shown on Debtor's Form 22, proposing a 60 month plan paying a total of \$900 through September, 2013 and \$1,045 per month for the remaining 58 months, proposing to pay no less than 0% to general unsecured claims. The original Plan proposed \$1,900.00 for 60 months with no less than 0% to unsecured claims.

Trustee had objected to the original Plan, and creditor RAC Acceptance West had opposed the motion to value filed with the plan. Prior to the hearings on these matters, Debtor inexplicably presented an Amended Plan, along with a supporting declaration which states:

I no longer need assistance from my friend. I have found a job and I am able to make all payments under the plan. The primary source of income for my household is from employment with Abort New Auto Sales and I anticipate this income source for the remainder of the plan.

Trustee states that it appears that Debtor is not reporting all household income, as Debtor's current and original Schedule I shows Debtor's household as having one son, one step-son, one step-daughter, and a significant other. The original Schedule I listed a \$1,000 per month in

contribution from the significant other. On the amended Schedules I filed in support of this motion, Debtor removed the contribution from the significant other, but still listed the same dependents.

(2.) Debtor has not proven his ability to make the Plan payments under 11 U.S.C. § 1325(a)(6). Debtor has declared that he has found a job, and can make all payments under the plan, which implies that he has found a new source of income. Based on Debtor's Amended Schedule I, Debtor has obtained new employment; although Debtor's original Schedule I showed employment with the same employer, there was no indication of how long Debtors was employed, but \$2,000.00 per month of estimated overtime reported. Amended Schedule I reflects the same overtime, with no indication of how long Debtor has been employed.

Debtor did not make all of the payments due under the original plan, paying \$300 on August 27, 2013 and \$500.00 on October 3, 2013. Without more evidence, the court cannot find that Debtor can pay the reduced amount of \$900.00 per month.

(3.) The Plan calls for adequate protection payments of \$640.00 a month to OneWest Bank , but also calls for \$35.00 per month to OneWest Bank for one post-petition payment. If the \$640.00 represents adequate protection, the \$35.00 would not appear necessary; if \$675.00 per month is required for adequate protection, \$6.03 should provide for \$675.00.

(4.) The treatment of two creditors, RAC Acceptance and Aarons Sale and Lease, may not comply with applicable law under 11 U.S.C. § 1325(a)(1). RAC Acceptance successfully opposed Debtor's prior motion to value, and Aarons has filed a claim asserting that they have an executory contract on which \$2,565.36 owed. Both creditors may have leases which are not assumed in the plan, but are placed in different classes where one is valued and the othre is not. Trustee is not certain whether the treatment is appropriate, unless Debtor moves separately to determine the secured status of the claims under 11 U.S.C. § 506.

Debtor's Reply

Debtor responds to Trustee's objections by acknowledging the concerns, and requests from the court additional time to supplement the record to address concerns with the Plan.

Trustee's Supplemental Response, filed December 16, 2013

To date, however, Debtor has not filed any supplemental documents. Trustee requests that the court deny Debtor's Motion to Confirm First Amended Plan on this basis.

Because Trustee's manifold issues with the Plan have not been corrected, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

31. [13-35871](#)-C-13 STEVEN/CHRISTY MENDOZA MOTION TO VALUE COLLATERAL OF
MMM-1 Mohammad M. Mokarram CITIMORTGAGE, INC.
12-26-13 [8]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 26, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as t 3124 Rosemont Drive Sacramento, California. The Debtor seeks to value the property at a fair market value of \$160,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$172,418.00. Creditor Citimortgage Inc.'s second deed of trust secures a loan with a balance of approximately \$91,353.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the

secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citimortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 3124 Rosemont Drive Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$160,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Thru #52

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Both the Trustee and a Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

In this instance, both Trustee and Creditor Cam Mortgage Trust have filed objections to Debtor's First Amended Plan.

Trustee's Opposition

Trustee objects on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value Collateral of Golden One Credit Union, PGM-3, which is set for hearing on this date. The court has decided to grant the Motion to Value Collateral of Golden One Credit Union, thus rendering Trustee's objection moot.

Lender's Opposition

Lender Cam Mortgage Trust ("Lender"), secured creditor of debtor under a First Deed of Trust obligation on the real property commonly known as 2009 Maryvale Way, Rancho Cordova, California, objects to Debtor's Plan on the basis that this is Debtor's second bankruptcy pending within a year of this bankruptcy filing. Debtor has filed two previous bankruptcy petitions, both of which were dismissed.

First Bankruptcy Case

Debtor's First Bankruptcy, Case No. 11-28425 was filed on April 4, 2011. The First Bankruptcy was dismissed on October 10, 2012. Debtor in this case proposed a Plan that would pay the prior holder of the note, Citimortgage, monthly payments as well as additional payments on the arrears. The First Bankruptcy Case was dismissed for failure to make Plan

Payments.

Second Bankruptcy Case

Debtor's second petition, Bankruptcy Case No. 12-39816, was filed on November 9, 2012. Debtor filed a Motion to Extend the Stay in that case, stating in her Declaration in Support of Motion to Extend the Stay that she "made a decision to surrender her home," further detailing how she could fund the plan payments based on her surrender of the subject property. The court granted Debtor's Motion to Extend the Stay, citing Debtor's express intention to surrender her home of 32 years to maintain her plan payments. Subsequently, Debtor proposed a plan on November 9, 2012, which proposed to surrender the property to Lender. The prior holder of the note, Citimortgage, was listed as a Class 3 Creditor for the property to be surrendered. The Plan provided relief from stay upon confirmation of the Chapter 13 Plan. The Plan, however, was not confirmed.

In response to a Motion to Dismiss filed by the Trustee, Debtor filed an amended Plan on March 6, 2013. The Plan provided for the same treatment of Lender (the surrender of property and relief from stay), but the Plan was not confirmed. Given the lack of payment, equity in the property, and the proposal to surrender the property in the plan, and the inability to confirm a viable plan, Lender filed a Motion for Relief from stay to foreclose on the property, which was granted on April 16, 2013 (Dckt. No. 72).

On June 18, 2013, seven months after bankruptcy was filed, after Debtor had made multiple representations that the property would be surrendered and after the relief from stay had been obtained, Debtor filed a Second Amended Plan on June 18, 2013, and sought to undo the prior order for relief by listing Creditor's claim and attempting to subject Creditor to a new stay. It listed Creditor as a Class 1 Creditor and proposed a \$1300 monthly payment (less than the monthly payment amount).

The court sustained Lender's objection and confirmation was denied. Thereafter a Motion to Dismiss was filed by the Trustee. The motion was unopposed and the second bankruptcy was dismissed on October 3, 2013.

Current Bankruptcy

Debtor filed this instant bankruptcy to stop the pending foreclosure sale. Debtor filed her Motion to Impose the Stay on October 29, 2013, but this Motion was denied, confirming that there is no stay in place in the bankruptcy.

Debtor is now again attempting to include the Lender's claim in her Plan filed on November 13, 2013. Despite the fact that there is no stay in effect, Debtor continues to attempt to include Lender in the bankruptcy and state that she is able to make payments. The Plan does not take into account the impending foreclosure and seeks to subject the Lender to the Plan by proposing normal monthly payments, plus an additional payment on the arrears.

As noted in the court's Civil Minutes Order on November 19, 2013 (Dckt. No. 36), the court was skeptical of Debtor's claims that she now receives monthly income from "retirement funds" and "Social Security income," totaling a monthly total income of \$4,630.65. In her Schedule I,

Debtor states that she has a monthly income of \$6,252.90 to show that she has additional disposable income. It appears that Debtor has now amended her Schedule I to reflect that she is working part time with the "Student Aid Commission," and claims that she has been working with the Sacramento-based employer for 6 months. The portion for rent and home mortgage payments is also left blank in her Schedule J expenses.

Debtor has not made any recent payments to Lender on the loan obligation, and has not received any payments since Debtor's second bankruptcy over a year ago. Lender asserts that this Plan was filed in bad faith and in violation of 11 U.S.C. § 1325(a). Debtor proposes to move forward with a Plan in an apparent to stop Lender's valid foreclosure set for January 23, 2014.

Debtor's Reply

Debtor asserts that the Plan is feasible, as it allows for ongoing payments and a timely cure of all arrears. Debtor maintains that the proposed plan complies with 11 U.S.C. § 1325(a)(3), and all fees required have been paid. Debtor states that the value of property to be distributed meets the Chapter 7 liquidation test, and the Plan provides payment to the holders of the secured claims.

Debtor asserts that the assertion that Debtor cannot afford to fund the plan can be resolved by allowing Debtor the opportunity to make the payments, and if she is unable to do so, relief can be granted within 30 days and Lender will not be harmed.

Debtor further argues that the declaration attached to Lender's opposition consists of hearsay statements. The "Note in the case was granted to "ABN AMRO Mortgage Group, Inc." An "Allonge to Note" is attached which states "Pay to the order of Bank of the West-Without Recourse." An Endorsement of the Promissory Note is alleged to have been paid to the order of CAM V. Trust. Debtor points out that the declaration of Manuel Villegas offered by the Lender states that he has personal knowledge of the "Limited Power of Attorney," which appears to be signed by Gary W. McCarthy, a member of HMC Assets, LLC, not be Manuel Villegas, who asserts that BSI is also the servicer for the Lender. Debtor states that Villegas does not have personal knowledge, only second hand knowledge of the matter.

As stated in the court's ruling on Debtor's previous Motion to Impose an Automatic Stay (PGM-1), Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case. Debtors bankruptcy filing does not satisfy the inquiry of determining good faith in filing, as set out by *In re Elliot-Cook*, 357 B.R. at 814-815 (Bankr. N.D. Cal. 2006). Debtors plans can are attempts to circumvent the previous relief order obtained by Creditor to pursue non-bankruptcy remedies against the property commonly known as 2009 Maryvale Way, Rancho Cordova, California.

Creditor prevailed on a Motion for Relief from Stay on April 16, 2013, which vacated the stay with respect to Creditor, so that Creditor could foreclose on the subject property. Debtors Amended Plan in the second bankruptcy case, however, lists Creditor as a Class 1 creditor, even though Creditor had obtained a relief order and Debtor represented that she would surrender the property. In the Plan filed on November 13, 2013, Debtor again includes Creditor in the Plan as a Class 1 Creditor, with no demonstration that Debtor can maintain and cure the this defaulted secured

claim.

As Lender points out, Debtor has not been clear in representing her employment situation and seems to concurrently claim retirement, part time job, and social security income in demonstrating that she has the disposable income to fund the Plan. Debtor's contradictory amendments to her schedules further confuse the court as to whether Debtor has the sufficient funds to make her plan payments. The court is not convinced that Debtor is now suddenly able to cure her default and make plan payments to the Lender. Thus, Debtor's Plan does not appear to comply with 11 U.S.C. §§ 1322 and 1325(a) and will not be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prospect Mortgage, LLC ("Creditor") is the holder of the First Deed of Trust on Debtor's real property located at 727 Sterling Court, El Dorado Hills, California. Creditor files an objection to Debtor's Plan on the basis that the Plan is not feasible and that Debtor has not provided for all secured creditors' arrears.

Creditor states that Schedule I indicates that Debtor's average monthly income is \$4,800.00. Debtor states that \$3,000 of that monthly income comes from the operation of her business, and that \$1,450.00 of her monthly income comes from real property, and \$350 from alimony. Schedule "J" indicates that Debtor's average monthly expenses are \$3,293.00, thereby leaving a monthly net income of \$1,507.00 to go towards the Chapter 13 Plan. Debtor's Schedule J indicates that Debtor's average monthly expenses are \$3,293.00, leaving a monthly net income of \$1,507.00 to fund the Plan. Debtor's Plan calls for monthly plan payments of \$868.32. Debtor's Schedules I and J however, do not provide for any income tax deductions related to this income. Further, Debtor's Schedule J does not account for monthly home maintenance, laundry, and/or medical and dental expenses.

Creditor maintains that the missing tax withholdings, coupled with other expenses, will likely exceed the \$638.68 "buffer" built into Debtor's monthly income and that Debtor actually possesses insufficient funds to support the current proposed monthly plan payment.

Additionally, of the time of the filing the instant bankruptcy,

Debtor owed \$55,367.08 in arrears to Creditor. Debtor states in her Plan that the pre-petition arrears owed to Secured Creditor is \$50,000.00, resulting in a discrepancy of \$5,367.08.

To provide for all of Secured Creditor's pre-petition arrears of \$55,367.08 over 60 months, Debtor would need to pay at a minimum \$922.78 per month. Debtor's Plan does not provide for a monthly arrearage dividend to be paid to Secured Creditor pursuant to the plan. The Plan also lists monthly contract installment amount as \$833.00; Creditor states that effective December 1, 2013, however, Debtor's monthly installment changed to \$2,427.91, consisting of the principal, interest, and escrow. Furthermore, The Plan does not accurately state the amount of pre-petition arrears. IT does not provide for a monthly arrearage dividend payment to secured creditor, and it understates the monthly contract installment amount by \$1,594.91.

The current Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on December 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) Debtor has not provided Trustee with a tax transcript or copy of her federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

(2.) Debtor has not provided Trustee with his/her Employer Payment Advices received 60 days prior to filing, under 11 U.S.C. § 521(a)(1)(B)(iv).

(3.) Plan is not Debtor's best effort under 11 U.S.C. § 1325(B). Debtor is under the median income and proposes plan payments of \$868.32 for 60 months and does not propose a dividend to unsecured creditors. Debtor's projected disposable income listed on Schedule J reflects \$1,507.00 and Debtor is proposing plan payments of only \$868.32 per month. Debtor lists the Class 1 on-going mortgage in the amount of \$2,415.00 on Schedule J, however this debt is being paid through the Plan and should not be included on Schedule J, thus Debtor has additional projected disposable income.

(4.) Debtor does not provide a dividend to unsecured creditors in Section 2.15 of the Plan.

(5.) Plan does not provide a dividend to Class 1 Mortgage Arrears. Debtor does not provide a dividend to Class 1 mortgage arrears in Section 2.08 of the Plan.

(6.) Plan exceeds 60 months; Plan proposes plan payments of \$868.32 for 60 months, which totals \$52,099.20 and Debtor is proposing to pay the Class 1 ongoing mortgage payment of \$833.00 per month, and \$50,000.00 to Class 1 mortgage arrears, and therefore the plan payment is insufficient to fund the Plan in 60 months.

(7.) Debtor's petition has not listed the expenses of court filing fee installment payments on her Schedule J.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 6, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim in the property commonly known 11133 Parkland Drive, Truckee, California to be \$0.00, and the secured claim in Debtor's personal property, as scheduled in Debtor's Schedule B, to be valued in the amount of \$30,065.57. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11133 Parkland Drive, Truckee, California. Debtor is also the owner of personal property listed on her Schedules B and C, which includes an assortment of bank accounts, household goods (dishwasher, freezer, laundry equipment, phones, game system, furniture, garage and gardening tools, kitchen supplies, and more), apparel, insurance policies, etc.

Debtor seeks to value the real property at a fair market value of \$899,143.00 as of the petition filing date. Additionally, Debtor seeks to value the personal property of the Debtor, as listed on Schedules B and C, at \$30,065.57. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

With respect to the real property, the first deed of trust secures a loan with a balance of approximately \$887,755.18. Therefore, any creditor's claim secured by junior deed of trusts would be completely under-collateralized. The Internal Revenue Service's secured claim on the real

property, should the tax lien attach to the real property, would be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) with respect to the real property is granted.

It appears that Debtor had valued her personal property, as listed on Schedule B (Dckt. No. 1) at \$35,0390.00. Debtor seeks to value the property collectively at \$30,065.57, based on the condition and needed "maintenance" on the collateral. At the date of the filing of the petition, Debtor owed \$30,065.57 to Creditor for a tax lien, according to Debtor's Schedule D. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$30,065.57. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Internal Revenue Service secured by a lien recorded against the real property commonly known as 11133 Parkland Drive, Truckee, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$899,143.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

IT IS FURTHER ORDERED that the claim of Internal Revenue Service secured by assets described as all personal property of Debtor, listed on Debtor's Schedule B, is determined to be a secured claim in the amount of \$30,065.57, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$30,065.57 and is encumbered by liens securing claims which exceed the value of the asset.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 20, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 5929 Shirley Ave. Carmichael, California. The Debtor seeks to value the property at a fair market value of \$310,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$330,232.06. Creditor Wells Fargo Bank's second deed of trust secures a loan with a balance of approximately \$156,226.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5929 Shirley Avenue, Carmichael, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$310,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and the Office of the United States Trustee, in addition to all creditors, on November 7, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee has filed an opposition to Debtor's Second Amended Plan. Trustee asserts that the Plan exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d); the Plan will complete in 66 months in that Debtor does not consider Trustee fees when calculating the Plan. The Plan proposes to pay \$590.75 for 60 months for a total payment of \$35,445.00. Debtor proposes to pay \$28,356.00 at 10% interest for a total of \$36,980.11 to the Sacramento County Tax Collector.

Additionally, the Trustee is unable to determine feasibility of the Plan. Debtor proposes to pay County of Sacramento in Class 2 of the Plan \$28,356.00 at 10% interest, but does not propose a monthly dividend to the creditor.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is

denied and the proposed Chapter 13 Plan is not confirmed.

38. [13-29881](#)-C-13 PERRY/BETSY FERRUCCI MOTION TO CONFIRM PLAN
CAH-3 C. Anthony Hughes 11-12-13 [[42](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

Local Bankruptcy Rule 3015-1(d)(1) requires that notice for motions to confirm modified plans be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)).

Although more than 42 days' notice was provided in this case, Debtor's Notice of Hearing on the Motion advises potential respondents that the Motion is being set on hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2), and not Local Bankruptcy Rule 9014-1(f)(1). This erroneously cited rule section, concerning Motions that are set on 14 days' Notice, may give potential respondents the impression that, pursuant to Local Bankruptcy Rule 9014-1(f)(2), opposition may be presented at the hearing. Respondents may believe that is not necessary for written opposition to be filed before the hearing date. Thus, the court will treat the instant Motion as an LBR 9014-1(f)(2) Motion to Confirm, and a tentative (not final) ruling will be issued.

The court's tentative decision is to grant the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 12, 2013, is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

Local Bankruptcy Rule 3015-1(d)(1) requires that notice for motions to confirm modified plans be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)).

Although more than 42 days' notice was provided in this case, Debtor's Notice of Hearing on the Motion advises potential respondents that the Motion is being set on hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2), and not Local Bankruptcy Rule 9014-1(f)(1). This erroneously cited rule section, concerning Motions that are set on 14 days' Notice, may give potential respondents the impression that, pursuant to Local Bankruptcy Rule 9014-1(f)(2), opposition may be presented at the hearing. Respondents may believe that is not necessary for written opposition to be filed before the hearing date. Thus, the court will treat the instant Motion as an LBR 9014-1(f)(2) Motion to Confirm, and a tentative (not final) ruling will be issued.

The court's tentative decision is to grant the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 11, 2013, is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) The Plan relies on the pending Motions to Value Collateral of Preferred Credit, Purchasing Power, and Paradigm Acceptance, which are set for hearing on this same hearing date. Trustee is advised that the court is granting all Motions to Value Collateral at issue, thereby rendering this part of Trustee's objection moot.

(2.) Debtors' Plan in Section 5 lists three Secured Class 2B Claims; however, the Plan does not indicate if these debts are Purchase Money Security Interest debts, although by description they may be purchase money security interests. The Plan defers any payment to them until Month 13, where the collateral appears minimal and are likely to depreciate in value substantially.

(3.) Plan may not be proposed in good faith and may be causing unfair discrimination to unsecured creditors under 11 U.S.C. § 1325(a)(3) and 11 U.S.C. § 1322(b)(1). Joint Debtor is paying an ongoing student loan payment, with a repayment of \$250.00 a month. Debtor does not disclose this treatment, provided for in Schedule J, to creditors in the Plan as either a Class or general unsecured.

(4.) Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Schedule I indicates that Joint Debtor

is currently on disability, and thus his current income is less than stated above. Joint Debtor is represented as expected to return to work in three months. At the First Meeting of Creditors held on December 5, 2013, Joint Debtor testified that his disability has been extended and that he receives \$2,000 per month in disability income. Line 1 of the schedule indicates gross wages of \$3,084.80. Debtor is not receiving the income listed on the schedule currently.

(5.) The plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Income wise, Debtors' Schedule I lists gross wages for Arlene Bailey of \$4,851.00 per month. A review of Debtors' pay advices provided to Trustee indicate that Debtor's regular monthly pay is \$4,851.00 per month; however, Debtor also receives \$130.00 per month in COBEN cash, and an additional benefit amount of \$147.10. Neither of these amounts is listed on the Schedule I.

With respect to expenses, Debtors' Schedule J lists Anticipated "Supplemental Federal and State Taxes" of \$363.00 per month. Debtors testified that they plan to save this amount monthly, but have yet to start saving it. Schedule B shows a total bank account balance of \$400.00 at the time of filing. A review of the pay advices provided for both Debtors reveal that they are not having federal taxes deducted from their wages. A review of the federal tax returns for years 2011 and 2012 provided to Trustee reveal that Debtors owe income taxes both years.

Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 22, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, the Internal Revenue Service, opposes Debtor's Chapter 13 Plan on the basis that the Plan does not provide for the entirety of Creditor's secured claim. Debtor owes a total of \$326,446.31 in pre-petition taxes, interest, and penalties. The Service filed its Proof of Claim on November 8, 2013 (Claim Number 2), with a secured claim of \$101,400.00. The Service is also the holder of a priority claim in the amount of \$2,596.31. The Service also has an unsecured general claim in the amount of \$222,450.00.

Creditor states that the Plan provides for a portion of its secured claim. It does not, however, provide for the Service's entire secured claim of \$101,400.00. In addition, the plan does not provide for full payment of the Service's priority claim. The plan also provides for a zero dividend to unsecured general claims, and is thus under-funded.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

42. [13-23191](#)-C-13 ESHIARI BALAWAG AND MOTION TO CONFIRM PLAN
MAC-4 ERLINDA MUTUC-BALAWAG 11-30-13 [[64](#)]
Marc A. Carpenter

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). Both the Trustee and Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee's Opposition

The Chapter 13 Trustee objects to the confirmation of Debtors' Plan for two reasons: it is unclear whether Debtors can afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and Section 2.10 of the Plan does not list Creditor's Name for the collateral description of Real Property located at 2820 Clarence Lane, Fairfield, California and for the 2012 Toyota Camry.

On the issue of Debtors' ability to make payments, Debtors filed Declaration on November 20, 2013, states that they have restructured their Chapter 13 Plan and intend to surrender their home and rent an apartment. Lines 18-19 state that Debtors intend to rent a room to add income of \$300.00 each month to help with the budget. Debtors' Amended Schedule I filed November 30, 2013, includes rental income in the amount of \$300.00. Debtors' Amended Schedule J now lists a rental expense in the amount of \$1,300.00. It is unclear whether Debtors have vacated their

residence located at 2820 Clarence Court and if the rental income of \$300.00 and the rent expense of \$1,300 are actual or anticipated figures.

Toyota's Opposition

Secured Creditor, Toyota Motor Creditor Corporation, asserts that Debtors agreed and became obligated to pay the sum of \$26,034.79 for the financed purchase of the subject property. Creditor claims that it has a purchase money security interest securing the debt which is the subject of its claim against Debtors and the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of Debtor.

Creditor objects to the \$16,175.00 valuation of the collateral under Debtor's Proposed plan. Furthermore, Creditor objects to the Debtors' classification of its secured claim as one subject to 11 U.S.C. § 506(a) when, the subject vehicle was purchased by Debtor 141 days prior to their filing of the above-captioned case and, therefore, Creditor's claim is not subject to §506(a).

Creditor further objects to the \$302.20 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan. Moreover, pursuant to the terms and conditions of the prevailing Security Agreement, Debtor agreed to keep the property properly insured at all times in an amount and with an insurer acceptable to Secured Creditor. Debtor further agreed to make the loss payable clause of any and all such insurance coverage payable in the name of Secured Creditor for as long as Debtor was indebted to it. Creditor discovered that it had not been provided with valid, written proof of Debtor's current insurance coverage for the property. Thus, Creditor contends that Debtor is operating the property without having any insurance coverage thereon and as a result, Creditor will be forced to purchase its own insurance coverage for the property which was, and at all times herein mentioned is, in Debtor's possession.

The court notes that Debtor did not file a Motion to Value the collateral, the 2013 Toyota Corolla Debtors purchased on October 2012. Debtors listed the value of the secured claim as \$16,175.00, without having filed a motion to re-value the lien pursuant to 11 U.S.C. § 506(a) and determine the actual value of Creditor's secured claim. Because of this unsupported valuation, in addition to other deficiencies of the Plan as presented by the Trustee and Creditor, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

43. [13-33993](#)-C-13 NATHAN POLLARD OBJECTION TO CONFIRMATION OF
NLE-1 Richard L. Jare PLAN BY DAVID P. CUSICK
12-11-13 [[19](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors are delinquent in \$120.00 in plan payments to the Trustee to date. The case was filed on October 31, 2013, and the Plan calls for payments to be received by Trustee no later than the 25th day of each month beginning the month after the order for relief. Debtor has paid nothing into the plan to date.

Furthermore, Debtor has not complied with 11 U.S.C. § 1325(a)(2). On December 6, 2013, Court issued an OSC Regarding Dismissal of the Case, set for hearing on January 8, 2014, which indicated that Debtor has not paid the \$70.00 due on December 2, 2013. It does not appear, after reviewing the court's docket, that the installment fee has been paid.

Additionally, Section 6.02 of the Plan indicates that the "confirmation of this plan acts as an injunction as to pre-petition creditors provided for by the plan." Trustee is not certain this provision

complies with applicable law, since Debtor is vesting property on confirmation and does not specify what Debtor seeks to enjoin with the plan. The court is also unclear on this provision, and is unsure whether Debtor is referring to the automatic stay arising out the bankruptcy case. Because of the current Plan's current deficiencies, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on December 16, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Refinance has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion to Refinance. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion seeks permission for debtor to undertake a mortgage refinance of an existing home loan. The proposed new debt is a single loan incurred to refinance debtor's existing mortgage encumbering the real property commonly known as 157 Las Palmas Avenue, Vallejo, California 94589. The current loan is a Class 4 debt being paid directly by a third party, Debtor's mother and step-father, who have also filed Chapter 13 Bankruptcy. See Case no. 2011-36378 filed in this District, are co-obligators on the loan. The debtor's plan provides for a 0% dividend to the general, unsecured creditors, and she is current in her plan payments.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor has been approved for a HARP refinance. The refinance will be replacing her current first-position mortgage with JPMorgan Chase Bank, N.A.. The existing second deed of trust is in the process of being "lien-stripped" as a Class 2 debt. The refinancing would slightly decrease the ongoing first mortgage payment from \$2,382.00 to \$2,136.58, but would lock in a 4.750% interest rate. The existing loan is an adjustable rate mortgage set to change July 1, 2014. The amount of the proposed loan is \$399,999.00, the interest rate is a fixed 4.750%, and the loan term is 30 years. Closing escrow costs will all be paid through the amount refinanced. Exhibit A is offered by Debtor to show the closing costs estimated by

Debtor.

Trustee's Opposition

Trustee is not certain if the proposed transaction is in the best interest of the estate, on the basis that Debtor's expenses are unclear. Amended Schedule J details a \$400.00 mortgage payment; however, in the related case of her mother and step-father, in case #11-36378, the Schedules in that case indicate that the Debtor pays the entire mortgage of \$2,137.00.

Debtor is showing on the Amended Schedule J, two deductions for personal care items, #12 "personal care items, hair cuts, etc." and additionally under #2, "see detailed Expense Attachment," and certain other expenses such as cable and garbage that may be duplicates of expenses in the other case.

There has been no notice of related case filed to show the relationship between Debtor's Chapter 13 Plan and that of her mother and step-father, Roman Osorio and Adalinda Escobar.

The Trustee is not otherwise opposed to the Motion to Refinance.

Debtor's Reply

Debtor files a Supplemental Declaration detailing her current living situation and contributions to the subject mortgage payment. Debtor rents a home in San Pablo, and does not live at the home encumbered by the subject mortgage, nor does she contribute to the subject mortgage payments. The issues surrounding double counting of "personal care items" are addressed in the Supplemental Declaration as well. While Debtors income and expense have change since the date of the filing of the Chapter 13 case, Debtor's net monthly income remains the same.

Debtor maintains that the decrease in the proposed mortgage payment will not affect her plan as the mortgage is being paid by her mother, a co-obligor on the loan, who resides at the property. She states that she is not contributing to the proposed mortgage payments under the terms of the refinance.

The court finds the terms of Debtor's mortgage refinancing with JPMorgan Chase Bank, N.A. to be reasonable. The refinancing would lock in the interest rate of 4.750% before the existing loan resets next year. Debtor indicates that the mortgage payment is being paid by her mother, a co-obligor on the loan, who resides at the subject property. The payments will not affect Debtor's plan, as the obligation is being paid by a third party.

The motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings,

January 14, 2014 at 2:00 p.m.

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Refinance is granted.

45. [13-34297](#)-C-13 KRIS/ROSEMARY KNUTSON MOTION TO VALUE COLLATERAL OF
SJS-1 Scott J. Sagaria HSBC BANK USA, NA
12-12-13 [[18](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 2455 Thistle Way, Lincoln, California. The Debtors seek to value the property at a fair market value of \$296,385.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$387,392.00. Creditor HSBC Bank USA, N.A.'s second deed of trust secures a loan with a balance of approximately \$78,831.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th

Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Bank USA, N.A. secured by a second deed of trust recorded against the real property commonly known as 2455 Thistle Way, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$296,385.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 16, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$500.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject personal property commonly known as "2011 47" Sony Smart Television." The Debtor seeks to value the property at \$500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor, AAFES, holds a \$3,121.46 claim secured by the subject personal property. The creditor's secured claim is determined to be in the amount of \$500.00. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of AAFES secured by a "2011 47" Sony Smart Television," is determined to be a secured claim in the amount of \$500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$500.00 and is encumbered by a senior lien securing a claim which exceeds the value of the Property.

47. [12-33314](#)-C-13 DALE/FRANCES ODOM MOTION FOR CONSENT TO ENTER
PGM-7 Peter G. Macaluso INTO LOAN MODIFICATION
AGREEMENT
11-21-13 [[116](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on November 21, 2013. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 3184 Bacon Island Street, West Sacramento, California.

Debtors successfully completed their trial loan modification payments and now seek to confirm the terms of their permanent loan modification. The first modified payment in the amount of \$2,520.97 at 2% interest was due December 1, 2013. Debtor will make this payment for thirty-six (36) months. The interest rate on the loan will increase to 3% in year four, 4% in year five, and to 4.125% for the remainder of the loan term. The new principal balance shall be \$436,108.36, with \$20,082.53 of the balance deferred with

January 14, 2014 at 2:00 p.m.

Page 94 of 127

no accruing interest. The maturity date of Debtor's loan is August 1, 2035.

A copy of the loan modification agreement with Bank of America, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Dkt. 119).

There being no objection from the Trustee or other parties in interest, and the motion complying with the provision of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Debtors Dale and Frances Odom are authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 7566 Mandy Drive, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A" Docket Entry No. 119, in support of the Motion.

48. [13-30717](#)-C-13 WAYNE SMALLWOOD
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[65](#)]

CASE DISMISSED 12/13/13

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Objection to Confirmation of Plan before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, **the court overrules the Chapter 13 Trustee's Objection to Confirmation of Plan.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having withdrawn its

motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Objection to Confirmation is overruled.

49. [13-27720](#)-C-13 EARLEEN MILLER MOTION TO CONFIRM PLAN
CFH-1 Curt F. Hennecke 11-8-13 [[19](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee withdrew his opposition to Debtor's Motion on January 2, 2013 (Dkt. 29). No opposition to the Motion was filed by creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 8, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

50. [13-23022](#)-C-13 JAY REESE MOTION TO DISMISS CASE
SJJ-6 Stephen J. Johnson 12-5-13 [[87](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on December 5, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

Debtor seeks to dismiss the Chapter 13 Case on the basis that the financial and/or legal situation of Debtor unexpectedly changed. Debtor moves to dismiss under 11 U.S.C. § 1307(b) and asserts that this case was not previously converted to Chapter 13 from Chapter 7, Chapter 11, or Chapter 12.

Pursuant to 11 U.S.C. § 1307(b), on request of the debtor at any time, the court shall dismiss a Chapter 13 case so long as it has not been converted under sections 706, 1112, or 1208 of Title 11. Here, a review of the docket indicates that Debtor's case was not subject to conversion and Debtor has the right to request dismissal.

Not seeing any opposition to Debtor's Motion, it is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

51. [11-46827](#)-C-13 UBONG INYANG MOTION TO APPROVE LOAN
PGM-4 Peter G. Macaluso MODIFICATION
12-3-13 [[94](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on December 3, 2013. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a permanent loan modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 270 Aviator Circle, Sacramento, California, after Debtors successfully completed their Trial Loan Modification. The new monthly loan payments will be in the amount of \$1,207.12 at an interest rate of 2.00% for 60 months. The interest rate will increase to 3% in year six, 4% in year seven, and 4.125% for the remainder of the loan term.

The modified principal balance of the note will include all amounts and arrearages that will be past due as of the effective date of the loan mod. The new principal balance of the loan will be \$297,773.27. A copy of the loan modification agreement with Bank of America, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 97).

There being no objection from the Trustee or other parties in interest, and the motion complying with the provision of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Debtor Ubong L Inyang is authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 270 Aviator Circle, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A" Docket Entry No. 97, in support of the Motion.

52.	13-34727 -C-13	TANYA SIMPSON	MOTION TO AVOID LIEN OF HSBC
	EJS-1	Eric John Schwab	FINANCE CORP.
			12-2-13 [19]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on December 2, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid a Judicial Lien is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Beneficial California, Inc. (now HSBC Finance Corporation) for the sum of \$9,043.24.

The abstract of judgment was recorded with Sacramento County on June 21, 2010. That lien attached to the Debtor's residential real property commonly known as 4421 Robertson Avenue, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$226,609 as of the date of the petition. The unavoidable consensual liens total \$228,841.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of HSBC Finance Corp. (formerly Beneficial California, Inc.), Sacramento County Superior Court Case No. 34-2009-00047482 CLCLGDS, Document No. 0006391849, recorded on June 10, 2010, with the Sacramento County Recorder, against the real property commonly known 4421 Robertson Avenue, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 11, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 11, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 913 Nicole Street, Dayton, Nevada. The Debtor seeks to value the property at a fair market value of \$90,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$134,000. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$34,213. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 913 Nicole Street, Dayton, Nevada, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$90,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

56. [13-34634](#)-C-13 MICHAEL/ANDREA VAN RY MOTION TO VALUE COLLATERAL OF
SAC1 Scott A. CoBen JPMORGAN CHASE BANK, N.A.
12-3-13 [[15](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 3, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5375 Jamal Way, Placerville, California. The Debtor seeks to value the property at a fair

market value of \$350,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$385,000. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$34,600. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5375 Jamal Way, Placerville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$350,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 20, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

58. [13-34037](#)-C-13 MESHA OWENS
PGM-2 Peter G. Macaluso
Thru #31

MOTION TO VALUE COLLATERAL OF
AARONS, INC.
12-9-13 [[24](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$888.41. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject personal property commonly know as a "73" Mitsubishi 3D Big Screen TV." The Debtor seeks to value the property at a value of \$888.41 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally vWash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor declares that the subject property was purchased on January 6, 2012 and financed by Aaron's, Inc. Debtor estimates that Aaron's, Inc. is due \$1,306.58 under the financing agreement and seeks to reduce the amount of Aaron's secured claim to the value of the collateral, \$881.41. The creditor's secured claim is undercollateralized and determined to be in the amount of \$888.41. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of

Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Aaron's, Inc., secured by a "73" Mitsubishi 3D Big Screen TV," is determined to be a secured claim in the amount of \$888.41, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is 888.41 and is encumbered by a liens securing a claim which exceeds the value of the Property.

59. [12-25238](#)-C-13 TINA HORNBEAK MOTION TO MODIFY PLAN
CAH-4 C. Anthony Hughes 12-2-13 [[53](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on December 2, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

60. [13-33851](#)-C-13 DANNY RUE
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[30](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Objection to Confirmation of Plan before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, **the court overrules the objection.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Objection to Plan Confirmation is overruled.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 11, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 38 Meadow View Dr., Colusa, California. The Debtor seeks to value the property at a fair market value of \$212,106 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$346,550. Resurgent Mortgage Servicing a Division of Resurgent Capital, L.P.'s second deed of trust secures a loan with a balance of approximately \$95,550. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Resurgent Mortgage Servicing a Division of Resurgent Capital, L.P. secured by a second deed of trust recorded against the real property commonly known as 38 Meadow View Dr., Colusa, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$212,106 and is encumbered by senior liens securing claims which exceed the value of the Property.

62.	<u>13-33257</u> -C-13	JAYNIE GORDON	MOTION TO VALUE COLLATERAL OF
	PR-1	Patrick Riaz	OCWEN FINANCIAL CORPORATION
			11-19-13 [<u>21</u>]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 19, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5104 Rose

Street, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$171,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$354,665. Ocwen Financial Services, Inc.'s second deed of trust secures a loan with a balance of approximately \$45,503. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of Ocwen Financial Services, Inc.
secured by a second deed of trust recorded
against the real property commonly known as
5104 Rose Street, Sacramento, California, is
determined to be a secured claim in the amount
of \$0.00, and the balance of the claim is a
general unsecured claim to be paid through the
confirmed bankruptcy plan. The value of the
Property is \$171,500 and is encumbered by
senior liens securing claims which exceed the
value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 6, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

64. [11-43271](#)-C-13 CORINNE SAUVE
JRR-6 Philip J. Rhodes

MOTION FOR COMPENSATION FOR
JOHN R. ROBERTS, CHAPTER 7
TRUSTEE(S), FEES: \$7,230.00,
EXPENSES: \$461.44
12-10-13 [[183](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Compensation is granted. No appearance required.

FEES REQUESTED

John R. Roberts, Chapter 7 Trustee for this case, seeks an order approving and authorizing compensation in the amount of \$7,230.00 and reimbursement in the amount of \$461.44 for expenses advanced, for a total of \$7,691.44. The period for which the fees are requested is for the period of October 2, 2012 through October 16, 2013. Trustee was appointed by the court in the case on August 10, 2012, when the case was converted from Chapter 13 to a Chapter 7.

Description of Services for Which Fees Are Requested

During the period October 2, 2012 through October 16, 2013, Trustee examined the Debtor at the meeting of creditors and determined that he could successfully conduct a short sale of the Debtor's home. Trustee proceeded to employ a real estate agent to list, market and negotiate a short sale. Trustee objected to the Debtor's exemption to her residence twice.

Trustee objected to Debtor's exemption twice. One objection was filed because Debtor did not file a Spousal Waiver of Exemptions, even though it had been requested at the meeting of creditors and then again in a letter to Debtor's attorney. The second objection was filed because Debtor attempted to exempt non-existent equity in her home, using the value as exempt of 100%. Trustee filed opposition to Debtor's motion to compel trustee to abandon property which he was short selling. Trustee filed a motion to approve the sale of Debtor's property as he received an offer, at

which point Debtor filed a motion to re-convert her case to a Chapter 13.

At the time Trustee listed Debtor's property for sale, Debtor's income and expenses showed that Debtor did not have the ability to service the mortgages on the property and therefore would not be able to salvage the home based on her income and expenses. While Debtor through her attorney represented that her financial circumstances had changed, Debtor refused to give Trustee any evidence of the changes.

Trustee believes that based on his experience, he would have successfully negotiated a short sale of Debtor's home, which would have provided a significant dividend to creditors.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of case shows that Trustee employed a realtor to list, market, and negotiate a short sale of Debtor's residence. Trustee intended to have the realtor and her brokerage negotiate directly with the lien holders of the property to ensure that the bankruptcy estate would receive a minimum benefit of \$15,000.00. The sale was not effected because of Debtor's motion to re-convert to a Chapter 13 case, immediately after Trustee had received a reasonable offer which would have generated a substantial benefit to the estate.

Furthermore, in connection with the short sale, Trustee had filed an objection to all exemptions under C.C.P. § 703.140(b) for the absence of a spousal waiver, which had not been filed at the date of the objection. Trustee had also objected to the exemption claimed on 3125 Orchard Park Court, Loomis, as Debtor's Amended Schedule C lists the Property exempt under C.C.P. § 703.140(b)(5) for 100%, with no dollar amount indicated. Trustee objected to the amended exemption in the property on the basis that the property is not an asset of the Debtor as the Debtor had no equity in the Property to exempt (Dckt. 137). This particular objection was sustained by this court.

Trustee maintains that had the sale been effected, Trustee's efforts would have produced a substantial benefit to the estate. The court agrees, and finds that Trustee's services would have likely benefitted the bankruptcy estate.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$300 an hour for the Trustee. The court finds that the hourly rates reasonable. The

total Trustee's fees and expenses in the amount of \$7,691.44 are approved and authorized from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the following amounts as compensation for Trustee in this case:

Trustee's Fees	\$7,230.00
Costs and Expenses	\$461.44

For a total final allowance of \$7,691.44 in Trustee's Fees and Costs in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that John R. Roberts is allowed the following fees and expenses as a professional of the Estate:

John Roberts, Chapter 7 Trustee for the Estate
Applicant's Fees Allowed in the amount of \$7,230.00
Applicants Expenses Allowed in the amount of \$461.44,

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2009 Maryvale Way, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$194,412.82. Creditor Golden One Credit Union's second deed of trust secures a loan with a balance of approximately \$46,392.03. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden One Credit Union, secured by a second deed of trust recorded against the real property commonly known as 2009 Maryvale Way, Rancho Cordova, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

66. [13-23175](#)-C-13 ROBERT/ADRIANA BYRNE OBJECTION TO CLAIM OF BANK OF
MMN-2 Michael M. Noble AMERICA, CLAIM NUMBER 4
12-2-13 [[42](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 2, 2013. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 4 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 4 on the court's official claims registry, asserts a \$55,072.48 claim. The Debtors object to the Proof of Claim on the basis that Debtors did own the property until October 29, 2009, when a grant deed was recorded selling the property to Patsy Johnson. Exhibit A. The sale to Patsy Johnson was for \$45,000 and as part of the sale, the first deed of trust holder (Wachovia) received \$36,500 to satisfy their lien. The total owed to Wachovia was more than \$100,000 and the property was sold short, since Debtors were "upside down" on the first loan. Bank of America, the second deed of trust holder, was contacted, but did not respond to the title company. Debtors now maintain

there is no collateral to support the claim because the property was sold.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

On January 6, Creditor Bank of America withdrew its Proof of Claim No. 4, filed on April 24, 2013, as the subject property had been sold (No Docket Number Assigned).

Based on the acknowledgment of the creditor, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Bank of America, N.A. filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 4 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 2, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

68. [13-33884](#)-C-13 ARLENE/RICHARD BAILEY
RI-1 Rebecca E. Ihejirika
Thru #65

MOTION TO VALUE COLLATERAL OF
PARADIGM ACCEPTANCE CO.
12-9-13 [[16](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$150.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a Gateway Computer. The Debtors seek to value the property at a replacement value of \$150.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

At the time of the filing of the petition, Debtors owed approximately \$1,037.00 to Paradigm Acceptance Co. for the purchase of the computer, as listed on Debtor's Schedule D. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$150.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Paradigm Acceptance Co., secured by an asset described as a Gateway Computer, is determined to be a secured claim in the amount of \$150.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$150.00 and is encumbered by liens securing claims which exceed the value of the asset.

69. [13-33884](#)-C-13 ARLENE/RICHARD BAILEY MOTION TO VALUE COLLATERAL OF
RI-2 Rebecca E. Ihejirika PURCHASING POWER, INC.
12-9-13 [[22](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$1,500.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtors are the owners of certain pieces of personal property described as a Washer, Dryer, Camera, Patio Set, and Dell Computer. The Debtor seeks to value the property at a replacement value of \$1,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

At the date of the filing of the petition, Debtors owed approximately \$5,201.49 to Purchasing Power, for the purchase of the Washer, Dryer, Camera, Patio Set, and Dell Computer. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$1,500.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant

to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Purchasing Powerm Inc. secured by assets described as Washer, Dryer, Camera, Patio Set, and Dell Computer is determined to be a secured claim in the amount of \$1,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$1,500.0 and is encumbered by liens securing claims which exceed the value of the asset.

70. [13-33884](#)-C-13 ARLENE/RICHARD BAILEY MOTION TO VALUE COLLATERAL OF
RI-3 Rebecca E. Ihejirika PREFERRED CREDIT INC.
12-9-13 [[28](#)]

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$150.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a Rainbow Vacuum. The Debtor seeks to value the property at a replacement value of \$150.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

At the date of the filing of the petition, Debtors owed approximately \$2,519.01 to Preferred Credit Inc., for the purchase of the Rainbow Vacuum. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$150.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Preferred Credit Inc. secured by an asset described as a Rainbow Vacuum is determined to be a secured claim in the amount of \$150.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$150.00 and is encumbered by liens securing claims which exceed the value of the asset.

71. [12-26098](#)-C-13 MONICA GRIMES-BURGER MOTION TO MODIFY PLAN
RLC-1 Stephen M. Reynolds 11-11-13 [[27](#)]
CASE DISMISSED 11/14/13

Final Ruling: The case having previously been dismissed, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan having been

presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, the case having already been dismissed.

72. [13-28798](#)-C-13 PHONDARA SANCHEZ MOTION TO CONFIRM PLAN
SJS-3 Scott J. Sagaria 11-11-13 [[57](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is denied. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor moves the court for an order confirming her First Amended Chapter 13 Plan.

The instant Motion appears to be an exact duplicate of Debtor's Motion to Confirm First Amended Plan (SJS-2, Dckt. No. 29) which was filed on August 20, 2013. On October 31, 2013, the court issued a minute order denying the Motion to Confirm the Plan (Dckt. No. 56), and denying the confirmation of the First Amended Plan. The reasons for the court's denial is detailed in its Civil Minutes, dated October 29, 2013, Dckt. No. 54.

Debtor has not filed a new Plan, and the instant Motion is identical, line-by-line, version of the previous Motion to Confirm filed by Debtor on August 20, 2013 (which was denied by this court).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the First Amended Plan is denied.